Supreme Court, U.S.
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No. 93-913

In the
Supreme Court of the United States
October Term, 1993

THOMAS G. LOVETT, JR.,
Trustee of the Bankruptcy Estate of
John Peterson Motors, Inc.,

Petitioner,

v.

GENERAL MOTORS CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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25 pp

QUESTION PRESENTED

Whether the court of appeals erred in setting aside a jury verdict for petitioner on the grounds that the evidence was insufficient under the governing legal standard.

LIST OF PARTIES

SUBSIDIARIES, JOINT VENTURES, AND AFFILIATES
IN WHICH
GENERAL MOTORS CORPORATION
OWNS LESS THAN 100 PERCENT OF THE
VOTING STOCK

THIS LIST IS BASED ON THE LATEST INFORMATION
AVAILABLE TO
THE GM CORPORATE SECRETARY'S OFFICE
(LAST UPDATED 1/6/94)

AC Bakony Kft.
ACCSCO S.A.
AMRAAM International Licensing Company
Adela Corporation
Adela Investment Company S.A.
AeroVironment, Inc.
Alambrados y Circuitos Electricos, S.A. de C.V.
AMBRAKE Corporation
American Foundry Co., Ltd.
American Mobile Satellite Corporation
Anadolu Otomotiv Sanayi VE Ticaret A.S.
Applied Intelligent Systems, Inc.
Aralmex, S.A. de C.V.
Arelex, S.A. de C.V.
ARINC Incorporated
Aristacom International, Inc.
Asset Leasing GmbH
Aura S.r.l.
Automotive Manufacturers (Malaysia) Sdn. Bhd.
Autos y Maquinas del Ecuador S.A. (AYMESA)
Avis, Inc. [non-voting shares]

BSS Belgique
BSS Greece
Bakony Spark Plugs & Ceramic Mfg. Ltd.
Banque de Credit General Motors
Behaviortech, Inc.
Beijing International Information Processing Company Limited
Bristol Center Owners Association
Bujias Mexicanas, S.A. de C.V.

CAMI Automotive, Inc.
CAPSCO Software Canada, Inc.
CEI Co., Ltd.
CLIOR
CLS Corporation
COGSYS Limited
Calsonic Harrison Co., Ltd.
Carus Grundstucks-Vermietungsgesellschaft mbH & Co. Object Kuno 65 KG
Carus Grundstucks-Vermietungsgesellschaft mbH & Co. Object Leo 40 KG
Centigram Communications Corporation
Centro Tecnico Herramental, S.A. de C.V.
China Management Systems Corporation
Cilva Holdings Plc.
Cimflex Teknowledge
Coalition Undertaking Remedial Efforts, Inc.
Comau Productivity Systems, Inc.
Comlinear Corporation
Compagnie de Faisceaux Tunisiens International S.A.
Compania Nacional de Direcciones Automotrices, S.A. de C.V.
Componentes Delfa, C.A.
Comtrac Corporation

Constructora Venezolana de Vehiculos, C.A.
Controladora General Motors, S.A. de C.V.
Controladora Mexicana de Autopartes, S.A. de C.V.
Convenient Automatic Transaction System
Convergent Corporation
Convesco Vehicle Sales GmbH

DBH America Inc.
DBH-Componentes Automotivos S.A.
DRB s.a./n.v.
Daewoo Automotive Components, Ltd.
Data Broadcasting Corporation
Delco de Carbon
Delco Products Sucursal Espanola
Delco Products Suspension Systems Ltd.
Delkor Battery Company, Ltd.
Detroit Diesel Corporation
Diavia Aire, S.A.
Diavia S.r.l.
DR DE CHIHAUHAU, S.A. de C.V.
Dupont Circle Holding Corp.

EDESA Societe Anonyme Holding
EDS Hellas
EDS Personal Communications Corporation
EDS-Scicon Defence Limited
ELTRO GmbH
EPEC S.A.
Earth Observation Satellite Company
ELEKLUFT Elektronik-und Luftfahrtgerate GmbH
Emperion Corporation
Empresa Mixta GEMACVEN, S.A.
Empresa Nacional de Optica SA
Ensamble De Cubiertas Automotrices, S.A. De C.V.
Europe Assurance Informatique

F&G Megamos Sicherheitselektronik GmbH
F.I.J. (France Informatique Juridique)
FLIR Systems, Inc.
Federal Computer Services Corp.
Federal Integrated Systems Corporation
First City Bancorporation of Texas, Inc.
First Portland Technology Corp.
4th Dimension Software, Inc.
Freevale Limited

G. & F. Company
GEST'HELP Huissier
GM-ARA Industrial Cleaning
GM Buana Indonesia
GM Nigeria Limited
GM-ARA Industrial Cleaning
G.M.A.C. Financiera de Colombia S.A.
Compania de Financiamiento Comercial
GMB Belgique
General Motors Bankgesellschaft m.b.H.
General Motors Colmotores, S.A.
General Motors Egypt, S.A.E.
General Motors France Automobiles S.A.
General Motors Hungary Automotive Distribution
Limited Liability Company (aka General Motors
Hungary (Distribution) Ltd.)
General Motors Hungary Manufacturing Distribution
Limited Liability Company (aka General Motors
Hungary (Manufacturing) Ltd.)
General Motors Kenya Limited
Genie Macanique Zairois, S.A.R.L.
Graphic Data Systems Corporation
Guiado y Control SA

H & D Radio Frequency Identification Products
H & R Company
HBH Company
HESI-FTIC Environmental Services, Inc.
HKV
Healthco Holding Corporation
Hitachi Data Systems Holding Corporation
Hospitality Franchise Systems, Inc.
Hughes Australia International PTY Ltd.
Hughes Electronics Manufacturing Service Company
Hughes Escorts Communications Limited
Hughes-JVC Technology Corporation
Hughes-Kenwood RDSS, Inc.
Hughes-Pareto Research Partnership
Hughes Software Systems Private Limited

I. K. Coach Co., Ltd.
IBC Vehicles (Distribution) Limited
IBC Vehicles Limited
IRISS Company
ITC Inland Teknik Oto Yan Sanayi Limited Sirketi
Ilmor Engineering, Inc.
Ilmor Engineering, Ltd.
i-Logix Inc.
Industries Mecaniques Maghrebines, S.A.
Industrija Delova Automobila, Kikinda
Infosys
Institut des Techniques Avancees
International Electro-Optical Industry Anonim Sirketi
Interpractice Systems, Inc.
Isuzu-General Motors Australia Limited
Isuzu Motors Limited

Japan Satellite Communications Network Corporation
Japan Systems Kabushiki Kaisha

Jinbei GM Automotive Co. Ltd.

Kabeltrommel GmbH & Co. KG
Kablewerek Reinshagen GmbH
Kablewerek Reinshagen Werk Berlin GmbH
Kablewerek Reinshagen Werk Newmarkt GmbH

LEA GP Incorporated
Legacy Association
Light Helicopter Turbine Engine Company
Low Emission Paint Research and Development Partnership
Low Emissions Technologies Research and Development Partnership

MCE
MLT Holding Limited Partnership
Macopel, S.A. de C.V.
Mecel AB
Metal Casting Technology, Inc.
Microelectronics and Computer Technology Corporation
Millbrook Pension Management Ltd.
Motor Enterprises, Inc.
Motors Insurance Purchasing Group, Inc.

National Car Rental System, Inc.
Neodata Corporation
New Center Development Partnership [partnership]
New Cure, Inc.
New United Motor Manufacturing, Inc.
New Venture Gear, Inc.
Nippon Avionics Co., Ltd.
Nippon EDS Co., Ltd.

Omnibus BB Transportes, S.A.
One Touch Systems, Inc.

Opel-Automobilwerk Eisenach-PKW GmbH
Opel-Handler Versicherungsdienst GmbH
Opel-Wohnbau GmbH
Orion

P. T. Mesin Isuzu Indonesia
PDES, Inc.
PT General Motors Buana Indonesia
PW-Allison Engines [partnership]
Pacific Monolithics, Inc.
Packard CTA Pty. Ltd.
Packard Electric Vas kft
Penske Transportation, Inc.
Perceptron, Inc.
Postal Buddy Corporation
PROGICAL
Promotora de Partes Electricos Automotrices
Promotora S.A. de C.V.

Qual-Effic Services, Inc.

RALS
Real/Data Ontario, Inc.
Rio Bravo Electricos, S.A. de C.V.
Riser Foods, Inc.
Robotic Vision Systems, Inc.
Ruedas de Aluminio, C.A.

SJ & LA Associates
Saab Automobile AB
Saginaw Sucursal Espanola
Satelitron S.A. de C.V.
Senalizacion y Accesorios del Automovil Yorka, S.L.
Shinsung Packard Company, Ltd.

Simpad, Sociedad Anonima de Capital Variable
(aka Simpad, S.A. de C.V.)
Sociedad de Comercializacion Internacional Colmotores S.A.
Society Francaise des Amortisseurs de Carbon S.A.
Societe Lyonnaise d' Informatique Boursiers
Soft-Switch, Inc.
Software Productivity Consortium, Inc.
State Enterprise for the Automotive Industry,
Ministry of Industry, Republic of Iraq
Subaru-Isuzu Automotive, Inc.
Subarban Limited Liability Company
Sung San Company, Ltd.
Supercomputer Automotive Applications Partnership
Suzuki Motor Corporation
Systems Control Technology, Inc.
Systems Technology Management Corporation

Telecommunications Data Services, Incorporated
The ASK Group, Inc.
Thomas Group, Inc.
Translant, Inc.
2000 Aircraft Credit AB

UKADGE Systems Limited
United Australian Automotive Industries Limited
United States Automotive Materials Partnership
Uveral S.A

Vanguarda Componentes Automotivos, S.A.
Vauxhall Motors (Finance) Plc
Vestiduras Fronterizas, S.A. de C.V.
View Engineering, Inc.
Volvo GM Canada Heavy Truck Corporation
Volvo GM Heavy Truck Corporation

Westcott Communications, Inc.
Woodbridge Foam Deutschland, GMBH

YLYS Informatique

Zexel Corporation

CONSORTIA

Auto/Oil Quality Improvement Research Program
Automotive Polymer-Based Companies Joint Venture and Development Partnership (aka Automotive Composites Consortium)
CAD/CAM Consortium
Environmental Research Consortium
High Speed Serial Data Communications Research and Development Consortium
Low Emissions Technologies Research and Development Partnership
Occupant Safety Research Partnership
U.S. Council for Automotive Research
United States Advanced Battery Consortium
Vehicle Recycling Consortium

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STATEMENT OF THE CASE

This antitrust case arises out of a non-price vertical restraint imposed by General Motors Corporation ("GM") when it reduced the supply of vehicles to its dealer John Peterson Motors, Inc. ("JPMI"). The dealership is represented in this case by its third trustee in bankruptcy, petitioner Thomas G. Lovett, Jr.

JPMI brought suit in 1985 against GM and General Motors Acceptance Corporation ("GMAC"), alleging some 11 causes of action and seeking preliminary injunctive relief. In 1985, the district court denied the request for an injunction, and dismissed two of JPMI's claims. John Peterson Motors, Inc. v. General Motors Corp., 613 F. Supp. 887 (D. Minn. 1985) (Murphy, J.). On motions for summary judgment decided in 1989, the district court dismissed four additional claims, including the claim under Minn. Stat. § 80E.13A, which requires a manufacturer to distribute vehicles sufficient for a dealer's market area. Neill v. General Motors Corp., No. 4-85-139, at 2 (D. Minn. September 18, 1989) (Doty, J.) (unreported decision). Trial followed in 1990. At the close of evidence, the district court ruled that GM had not breached any contract and had committed no tort; further, the trial court dismissed all claims against GMAC.

The case against GM went to the jury on federal antitrust and Dealers' Act claims. The jury found that GM dealt with JPMI in good faith, and returned a defense verdict as to JPMI's claims under the Dealers' Act. As to the antitrust claims, the district court instructed the jury, over GM's objection, in accordance with the per se rule. The jury returned a verdict finding that some unidentified GM dealers "conspired" in an attempt to restrain price competition and that GM "joined" this conspiracy to induce GM to reduce allocation to JPMI. In response to GM's post-trial motions, the trial court conceded that this case did not involve any

agreement regarding price or price levels. Nevertheless, the court applied the per se standard, and upheld the verdict. Lovett v. General Motors Corp., 769 F. Supp. 1506 (D. Minn. 1991).

GM appealed to the United States Court of Appeals for the Eighth Circuit on two primary grounds. GM's first and foremost argument was that the evidence at trial was insufficient to support a finding that GM was involved in an antitrust conspiracy. The second argument was that the district court erred in applying the per se standard rather than the rule of reason to the controversy at issue. In its opinion, the court of appeals found that, as a matter of law, the evidence at trial indeed had been insufficient to hold GM liable; the district court judgment was reversed. Lovett v. General Motors Corp., 998 F.2d 575, 581 (8th Cir. 1993). Because of its ruling on the sufficiency of the evidence, the court of appeals did not address the appropriateness of the antitrust standard applied by the district court, or the other legal issues raised on appeal by GM.

In the district court and in the court of appeals, the arguments did not focus on any constitutional issue, including the Seventh Amendment claim now raised by the petitioner. Although petitioner made passing reference to the Seventh Amendment on one page of his brief to the court of appeals and in his petition for rehearing below, the supposed constitutional implications of the case were not otherwise even mentioned, much less advanced, at any point in the courts below. Instead, petitioner has focused essentially on the sufficiency of the evidence.

The evidence, in summary form, was that GM acted independently to protect its distribution system from a "free rider." When GM learned of the resulting disruption, it refused to discuss the matter with complaining dealers, and instead met internally over several months, independently evaluated various options, and unilaterally determined to

impose a non-price vertical restraint. Even after GM had taken this action, it did not so advise those dealers that had complained to GM about the "free rider." At all times, GM acted alone.

The plaintiffs at trial and on appeal, as the petitioner does now, attempted to show that GM joined its dealers in a horizontal price fixing scheme. Petitioner's conspiracy "evidence" was found by the court of appeals to be "highly ambiguous." The evidence was that GM's action was preceded by multiple dealer complaints about JPMI's $49-over marketing program. There was absolutely no evidence that any dealers agreed on prices or price levels. Indeed, even the district court found that "[t]he present case involved no agreement about price or price levels." 769 F. Supp. at 1516. Instead, the evidence showed fierce price competition, manifested in consumer haggling, special offers by dealerships, and individualized negotiations with each customer.

The evidence cited by the district court with respect to GM's involvement in the alleged conspiracy was that (1) the Buick zone manager assigned the responsibility for allocating cars to JPMI to a different individual in his office; (2) the Oldsmobile zone manager visited JPMI, became angry, and then made contact with the GM legal department; (3) the Cadillac zone manager visited JPMI and told Mr. Peterson that Twin Cities Cadillac dealers were upset with JPMI, but Peterson did not know whether the zone manager was talking on behalf of Cadillac or the other dealers; (4) in November of 1983, GM conducted conference calls to its own employees regarding the $49-over program; (5) GM called its own managers together in February of 1984 to gather information to respond to a letter from JPMI; (6) GM's legal department was concerned with the distribution problem caused by the $49-over program; (7) the Oldsmobile Division wrote a memorandum expressing various marketing concerns about the $49-over program; (8) Buick in February of 1984 reduced

JPMI's allocation to be "somewhat in line with" planning potential; and (9) Buick wrote an internal letter on March 9, 1984 regarding an "imbalance" in the distribution of vehicles in the Minneapolis zone. All of the above-referenced actions showed only independent action by GM and involved none of GM's dealers or any other party.

The district court also cited "evidence," as petitioner does now, that was rejected as insufficient by the court of appeals. That would-be evidence was the testimony of customers Keith Johnson and Jay Brooks regarding their orders of automobiles. Johnson contended that metropolitan-area dealers told him they could deliver a vehicle more quickly than JPMI, but would not discount; he further testified that a GM employee told Johnson that Johnson "knew very well what was happening and that [Johnson] was playing games." Id. at 1512. The court of appeals noted that the "Johnson incident happened after GM had already restricted JPMI's allocation." 998 F.2d at 580. A letter from customer Brooks to GM also was offered into evidence, but the district court sustained objections to the letter on hearsay grounds. As the court of appeals correctly pointed out, "the Brooks letter was not admitted to show its truth and the incident took place before GM allegedly joined the conspiracy or cut back JPMI's car supply." Id. The Johnson and Brooks testimony was thus insignificant as a matter of law.

Pursuant to Rule 15.1 of the Rules of the Supreme Court, GM also brings to the Court's attention misstatements of fact set forth in the petition. First, as a general matter, the "facts" stated in Part A of the petitioner's Statement of Case are stretched, taken out of context, and horribly incomplete. The same is true for the recitation of "evidence" set forth in pages 10-13 of the petition. Second, even the snippets presented reflect inaccurately what is really in the record. For example, serious misstatements of the evidence relate to customers Johnson and Brooks. The question whether Johnson's car had

been "preferenced" by JPMI was never the subject of proof at trial. Similarly, the petitioner's statement that "Brooks testified that he was told that Twin Cities dealers had convinced GM to 'run JPMI out of business'" is wrong. Brooks offered no such testimony. The reference apparently is to the "Brooks letter" (Exhibit 600), which was found to be hearsay and not admitted for the truth of the matters contained in it, as the district court acknowledged and as the court of appeals clearly recognized.

In addition, as to the citation to Cadillac zone manager Grogg's alleged statements, the petitioner himself states to this Court that "Peterson testified that he wasn't sure if Grogg was speaking for GM or the Cadillac Dealers Association." (Petition at 11.) Petitioner's continued reliance on this obvious non-evidence of conspiracy has gone now from the district court (where it was relied upon by the trial judge) to the court of appeals (where it was rejected), and now to this Court.

Finally, as "evidence" supposedly supporting his lengthy recitation of allegations, petitioner cites not the record, but only the post-trial opinion of the district court, which was flatly rejected by the court of appeals. Accordingly, such reliance is misplaced and the references misleading. As GM demonstrated to the court of appeals, the district court opinion, to the extent it purported to restate the evidence at trial, was not supported by the actual transcript or the documents received in evidence. That transcript and the relevant exhibits were submitted to the court of appeals, both in lengthy excerpts in the parties' appendices and as a whole for complete review.

REASONS FOR DENYING THE WRIT

Summary of the Argument

Contrary to the position taken by the petitioner, no constitutional issue is presented in this case. The "Seventh Amendment" theme is the same as that routinely echoed by parties whose jury verdicts are subsequently set aside; certainly an appellate court is empowered to enter judgment as a matter of law for a party, even in the presence of an adverse jury verdict. In addition, this case presents no conflict in the circuits in applying evidentiary standards under the Sherman Act.

A. The Decision of the Eighth Circuit Does Not Conflict With the Tenth Circuit and Seventh Circuit Cases Cited in the Petition.

The petition cites three cases -- two from the Tenth Circuit and one from the Seventh Circuit -- for the proposition that other circuit courts of appeal have applied a different evidentiary standard than was applied by the Eighth Circuit in this case. The cases petitioner cites are Gibson v. Greater Park City Co., 818 F.2d 722 (10th Cir. 1987); Key Financial Planning Corp. v. ITT Life Ins. Corp., 828 F.2d 635 (10th Cir. 1987); and Reserve Supply Corp. v. Owens-Corning Fiberglas Corp., 971 F.2d 37 (7th Cir. 1992).[1]

Oddly, in each of the three cases cited by the petitioner, the procedural setting was the same: the district court granted summary judgment for the defendant, and the respective courts of appeal affirmed the district court decision. How

[1]Two of the three cases are miscited in the petition, which indicates incorrectly that the Gibson case is at "518 F.2d" and the Reserve Supply case is at "791 F.2d."

these cases could possibly conflict with the decision of the Eighth Circuit, which came after denial of summary judgment, a jury verdict, and a district court opinion upholding the verdict, is beyond comprehension.

Moreover, the decision of the Eighth Circuit is actually consistent with the law as it was stated in the Gibson, Key Financial, and Reserve Supply cases. In each of those three cases and in the Lovett case, the court of appeals found that, as a matter of law, the evidence was insufficient for jury consideration on the issue of conspiracy. Each case correctly followed this Court's decisions in Monsanto Co. v. Spray-Rite Serv. Corp., 465 U.S. 752, reh. den. 466 U.S. 994 (1984), and Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574 (1986). All four courts correctly followed this Court's guidelines for analysis. Specifically, the Eighth Circuit in this case determined that the plaintiff's evidence was "ambiguous," in that it was as consistent with permissible unilateral conduct as with illegal conspiracy. Lovett, 998 F.2d at 580-81. The Eighth Circuit also found that there was no evidence that tended to exclude the possibility that the defendant was acting in its own independent interests. After clearly and appropriately citing this standard, id. at 578, as the Tenth and Seventh Circuits had, the Eighth Circuit carefully analyzed the record and concluded that "Lovett did not carry his burden to produce evidence tending to exclude the possibility that GM acted independently of its dealers when it restricted JPMI's allocation of vehicles." Id. at 581. That is the very two-step analysis that the petitioner claims should have been followed. It was. Thus, even putting aside the differences in the procedural context in which the cases arose, there is no conflict whatsoever between the circuit court decisions referenced in the petition and that challenged today.

B. The Petition Fails to Raise any Constitutional Issue.

No constitutional issue is involved in this case. Although the petitioner did place one citation to the Seventh Amendment in his brief on appeal and in his petition for rehearing below, the transparent reliance on the Constitution in the petition to this Court reveals nothing more than a continued quarrel as to the sufficiency of the evidence. The issue considered and decided below did not turn on constitutional law, but involved the sufficiency of the evidence. A petitioner cannot manufacture a constitutional issue in this Court simply by showing that a court of appeals set aside a jury verdict.

The petitioner's Seventh Amendment argument has no merit. In order to reinstate a jury verdict that has been set aside by a reviewing court in an antitrust case, it must be shown that the jury was able to "know and understand the law, the facts of the case, and the realities of the market." Brooke Group Ltd. v. Brown & Williamson Tobacco Corp., ____ U.S. ____, 113 S. Ct. 2578, 2598 (1993). A court is empowered to set aside a verdict if it is deficient in any one of these respects. Id.

In this case, the verdict was deficient in all three respects. First, as stated, the Eighth Circuit correctly held as a matter of law that there was insufficient evidence of any agreement or restraint of trade, and therefore, GM was entitled to summary judgment or a directed verdict. In addition, the standard of law that the jury was instructed to apply to the case was erroneous. If there was any concerted action in this case, it was plainly non-price and therefore, under the Monsanto standard, entitled to rule of reason treatment. 465 U.S. at 761. As even the district court noted, in this case the "plaintiffs did not prove the requisite elements of a cause of action under the Rule of Reason." 769 F. Supp. at 1513.

Lastly, the verdict of the jury was not consistent with the reality of the market. The reduction of allocation to JPMI was not manifestly anticompetitive, nor did it adversely affect interbrand competition. Indeed, as the exhibits at trial plainly showed, interbrand price competition was alive and vigorous and GM intrabrand output rose, not decreased, after the reduction of allocation to JPMI.

This case was and is a sufficiency of the evidence case, and there is no evidence sufficient to establish any conspiracy in restraint of trade. Petitioner did not show a conspiracy among the dealers or that GM joined any dealer conspiracy. Petitioner did not show any concerted dealer commitment to an unlawful objective. Petitioner did show that dealers, individually and through their advertising association and national council, complained to GM that JPMI (and other $49-over dealers) were "free riders" and urged GM to adhere to its dealer sales and service agreement, which required all dealers to provide pre-sale, point-of-sale, and post-sale services. Such complaints, dealers supplying such market information to the manufacturer, and even the manufacturer discussing profits and retail prices with a dealer, do not amount to a conspiracy or demonstrate a "common commitment to an unlawful objective." Such conduct is not only permitted, but also in Monsanto is recognized as a reality of the marketplace. 465 U.S. at 762.

GM's independent action in implementing its distribution policy to counter this disruption was clearly vertical, and clearly non-price. Even if it was taken after complaints made by the dealers for anticompetitive reasons, that does not transfer the dealers' anticompetitive intent to GM or make its actions manifestly anticompetitive. To the contrary, the evidence clearly showed that GM acted independently and that GM had independent, legitimate business reasons for so acting.

This Court has said that Continental T.V., Inc. v. GTE Sylvania, Inc., 433 U.S. 36 (1977), and Monsanto are cornerstones of antitrust policy. Business Elecs. Corp. v. Sharp Elecs. Corp., 485 U.S. 717, 726-28 (1988). In implementing its distribution policy, GM relied upon the law as set forth in those cases and their progeny. The facts of this case show that JPMI was causing a significant disruption in GM's distribution system. The record shows that there were weighty reasons why GM could, should, and did act independently to curtail the activity of JPMI, and that petitioner produced no reliable evidence that tended to exclude that possibility. If in this case petitioner can convert a vertical, non-price restraint to a horizontal conspiracy, simply by means of its allegations and "highly ambiguous" evidence, Sylvania and Monsanto are cornerstones without weight and doctrines as fragile as clouds.

This Court should deny the petition for writ of certiorari and allow to stand the judgment of the United States Court of Appeals for the Eighth Circuit.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Dated: January 7, 1994.

Respectfully submitted,

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